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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re the Marriage of ROBERT McKENZIE  
MEAD and CAROLYN INEZ WILLIAMS-MEAD.

C065718

ROBERT McKENZIE MEAD,

(Super. Ct. No.  
03FL03504)

Appellant,

v.

CAROLYN INEZ WILLIAMS-MEAD,

Respondent.

After 12 years of marriage, appellant Robert McKenzie Mead (Robert) and respondent Carolyn Inez Williams-Mead (Carolyn) divorced. As sometimes happens, the divorce settlement spawned lengthy, acrimonious litigation, including a prior appeal to this court. (*In re Marriage of Mead and Williams-Mead* (Nov. 1, 2007, C052999) [nonpub. opn.] (*Mead I*).)

The saga continues. The trial court, following the prior appeal, issued an order for appearance and examination of judgment debtor Robert to aid in the collection of a \$50,000

equalizing payment to Carolyn. Robert filed a motion to vacate the examination and a motion to vacate the underlying judgment, both of which the trial court denied.

Robert, proceeding in pro. per., appeals the denial of both motions. We shall affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND -- PRIOR APPEAL<sup>1</sup>**

The couple married in 1992. Exactly 12 years later to the day, on December 9, 2004, they stipulated in court to the terms of a marital settlement agreement (agreement). Both were represented by counsel.

The court ascertained that Robert understood the terms of the agreement and stated the agreement was enforceable as a judgment under Code of Civil Procedure section 664.6.<sup>2</sup> The dissolution judgment incorporating the agreement was filed on March 8, 2005.

Three months after stipulating to the agreement, Robert had not signed a formal marital settlement agreement. At a compliance review hearing in March 2005 the court entered judgment under section 664.6. The court adopted the agreement prepared by Carolyn's attorney. Robert had signed this agreement, writing next to his signature, "under judicial order." Robert claims the court clerk told him the court

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<sup>1</sup> The following facts are taken from *Mead I, supra*, C052999.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

ordered him to sign the agreement. A veritable blizzard of litigation followed.

### **First Motion to Vacate**

Shortly thereafter, Robert filed a motion to vacate the judgment, arguing paragraph 8 of the agreement conflicted with the parties' oral stipulation. The parties orally stipulated on December 9, 2004, that: "Husband is awarded, as his sole and separate property, the home on Spring Azure Way and will pay to wife \$50,000 as an equalization payment. He will pay that within 90 days with no interest. [¶] He has the option not to pay her within 90 days, but to give her a promissory note in the sum of \$50,000, payable in five years, interest only at 7 percent, monthly payments secured by a deed of trust on the home."

During the oral stipulation, the court repeated the agreement. The court stated: "He's agreeing to give her an equalization payment of \$50,000 for 90 days, there's no interest and he can pay it. If he doesn't pay it within 90 days then he is obligated to do a promissory note secured by a second deed of trust at 7 percent. [¶] Starting when?" Carolyn's attorney responded: "Today." Robert's attorney agreed. The court later reiterated the interest began accruing that day, and Robert's counsel again answered in the affirmative.

Paragraph 8 of the agreement states, in pertinent part: "Husband is awarded as his sole and separate property the home located at . . . Spring Azure Way . . . . Husband shall pay to Wife the sum of \$50,000 as equalization . . . . The \$50,000

shall be paid by Husband to Wife within ninety (90) days of December 9, 2004, or by March 9, 2005 without interest. If said sum is not paid . . . on or before March 9, 2005 then interest shall be due at the rate of seven percent . . . . If Husband does not pay the \$50,000 by March 9, 2005 he shall execute a promissory note secured by deed of trust including the above terms."

In the motion to vacate, Robert argued the parties stipulated to giving him 90 days to pay without interest, providing him with time to refinance. Therefore, according to Robert, the 90 days could not begin to run unless Carolyn first conveyed title to the family home to him. Paragraph 8 incorrectly provided that the 90 days would begin to run on December 9, 2004, making him liable for interest from that date if he failed to pay Carolyn by March 9, 2005.

Carolyn argued the oral stipulation made no mention of allowing Robert 90 days to refinance, nor did the parties agree she had to convey title before the time began to run. Instead, the oral stipulation, made on December 9, 2004, simply states that Robert "will pay that [equalization payment] within 90 days." If Robert chose to give Carolyn a promissory note, interest would begin to accrue on December 9, 2004.

The court denied Robert's motion to vacate the judgment. Robert did not appeal the judgment or the order denying his motion.

### **Motion to Enforce Judgment**

Carolyn filed a motion to enforce portions of the judgment, including paragraph 8 and a provision requiring Robert to make a separate transfer of \$50,000 from his 401(k) retirement account to Carolyn's IRA.

Following a hearing, the court found Robert delayed and frustrated the division of the 401(k) account as required by the agreement. The court ordered Robert to take all reasonable steps to effectuate the transfer of the \$50,000. In addition, the court found Robert in default in paying the \$50,000 equalization payment for Carolyn's interest in the family home. The court determined Robert owed interest on that amount from December 9, 2004, through the hearing date, November 29, 2005, for a total of \$53,404.11. The court issued a writ of execution upon Carolyn's application.

### **Sanctions**

The court also sanctioned Robert \$2,500 under Family Code section 271. Robert's conduct, according to the court, unreasonably exacerbated Carolyn's attorney fees and frustrated settlement of the issues.

Robert filed a petition for a writ of prohibition in this court. We denied the petition, noting there was an adequate remedy by appeal. Robert did not appeal the enforcement order.

### **Second Motion to Vacate**

Less than a week after we denied his writ petition, Robert filed a second motion in the trial court to vacate the enforcement order under section 663. Robert argued that he had

not obstructed or delayed the \$50,000 transfer but that Carolyn was responsible for the delay. In addition, Robert claimed that eight months before the hearing on the enforcement order, Carolyn gave him an interspousal grant deed to the family home. Thus, Robert contended, his liability for the \$50,000 equalization payment was extinguished.<sup>3</sup> The court denied the motion.

Robert moved for reconsideration of his motion to vacate the enforcement order. The court denied the motion as untimely. The court also found Robert failed to show diligence in producing evidence in support of the motion, and failed to present new or different facts.

### **Third Motion to Vacate**

Robert filed a third motion to set aside the March 8, 2005, dissolution judgment pursuant to Family Code section 2120 et seq. For the first time, Robert contended he signed the agreement under duress and undue influence. According to Robert, his capacity to consent to the agreement on the day he signed it was impaired by the drug Vicodin.

Robert also argued that paragraph 9.a of the agreement was invalid. Paragraph 9.a states that all of Carolyn's interest in the company C/A Williams, LLC (Williams) is confirmed as her sole and separate property. In negotiating the agreement, Robert's counsel stated his client acknowledged that Carolyn's

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<sup>3</sup> As Carolyn notes, Robert did not make this argument in opposing the earlier enforcement motion.

interest in Williams was her separate property, and he waived any community property claim in the company. In arguing the provision was invalid, Robert stated Carolyn worked for Williams during the marriage and filed an income and expense declaration showing she was receiving benefits from Williams totaling over \$110,000.

Following a hearing, the trial court denied the motion, stating: "The Court has carefully reviewed the pleadings and fully considered the arguments presented at hearing. The Court finds no merit to Petitioner's motion. Accordingly, the motion is Denied in its entirety." Robert filed a timely notice of appeal from the order filed June 2, 2006, denying his third motion to vacate.<sup>4</sup>

#### ***Our Decision***

We found no merit in Robert's claim that when he signed the agreement in 2004 he was mentally impaired by Vicodin and subject to undue influence by the trial court, which forced him to sign the order. We determined the trial court, charged with evaluating the credibility of witnesses, properly rejected Robert's claim.

Robert also attacked the validity of the section of the agreement awarding him the family home and obligating him to pay

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<sup>4</sup> The parties expend a great deal of sound and fury over whether Robert may appeal the denial of his first and second motions to vacate, or issues implicated therein. However, we consider only the trial court's ruling on Robert's third motion to vacate. Robert appealed only from that order.

Carolyn an equalizing payment of \$50,000 for the release of her interest. Carolyn argued that by accepting the benefits of the agreement, Robert waived the right to attack it on appeal.

We agreed, noting the agreement awarded Robert the family residence in exchange for an equalizing payment of \$50,000 to Carolyn. Carolyn released her interest in the property, giving Robert a grant deed. Robert accepted the deed and recorded it. Having accepted the deed, Robert cannot attack that section of the agreement on appeal. “‘Ordinarily, a party cannot accept the benefits of a judgment, in whole or in part, and then attack it by appeal. His conduct in taking any of its advantages while seeking to reverse it is inconsistent, and the result is a waiver of the right.’ [Citations.]” (*In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174, 1179-1180.)

Robert also argued the court lacked jurisdiction over the family home because its jurisdiction is limited to confirming the property to its owner and ordering reimbursement from a spouse’s separate property to the community. We found that the parties agreed Robert would pay Carolyn a \$50,000 equalizing payment. The agreement vested the court with jurisdiction to enforce it. (Fam. Code, § 2010.)

Robert also argued the trial court erred in determining there was no merit to his quiet title action. According to Robert, by giving him the grant deed, Carolyn extinguished his liability for the \$50,000 equalization payment. We found Robert’s argument untenable. Robert agreed to make the equalization payment but insisted he could not make it until



Carolyn delivered the deed so he could refinance. We found Robert could not now argue Carolyn's delivery of the deed extinguished that obligation.

Finally, Robert argued the trial court erred in refusing to vacate the judgment because Carolyn failed to fully disclose her "community interest" in Williams in her final declaration of disclosure under Family Code section 2105 prior to settlement. However, we determined that in considering Robert's claim that Carolyn failed to accurately describe her interest in Williams in her disclosure declaration, the trial court could choose to find Carolyn's version of events more reliable than Robert's unsupported accusations. Sufficient evidence supports the trial court's denial of Robert's motion to vacate the judgment.

Accordingly, we affirmed the judgment and awarded Carolyn costs on appeal.

### **Proceedings in Bankruptcy**

Robert filed a chapter 13 bankruptcy petition and plan, listing Carolyn as his only unsecured creditor and proposing to pay her a 4 percent dividend on the claim. The bankruptcy court found Robert filed the petition and plan in bad faith.

The court also determined that Carolyn's claim was secured by an abstract of judgment, although Robert's petition treated her claim as that of an unsecured creditor. The court found Carolyn was a lien creditor, based on the recording of the abstract of judgment. Although Robert raised issues pertaining to the validity of Carolyn's lien, the court found Robert could not litigate the validity of the lien through the plan.

Instead, Robert should have filed a separate proceeding to litigate the lien.

Robert appealed the court's denial of his chapter 13 plan. The Ninth Circuit Bankruptcy Appellate Panel affirmed the trial court's decision. The panel found Robert sought to improperly deprive Carolyn of the rights conferred upon her under state law. After his state litigation against Carolyn failed, Robert filed bankruptcy, seeking to accomplish in bankruptcy what he could not in state court. Robert did not seek to invalidate Carolyn's claim, but improperly mischaracterized her claim as that of an unsecured creditor.

According to the Ninth Circuit Bankruptcy Appellate Panel, Robert misrepresented the facts in his plan, attempted to unfairly manipulate the Bankruptcy Code, and proposed his plan in an inequitable manner. Robert's actions amounted to bad faith.

#### **Order for Appearance and Examination**

In May 2010 the trial court issued an order for appearance and examination of judgment debtor Robert in an effort to settle the \$50,000 equalizing payment to Carolyn. The following month, Robert filed a motion to vacate the order for appearance and a fourth motion to vacate the underlying December 9, 2004, March 8, 2005, and January 10, 2006, orders.

The court denied both motions. "Court denies Petitioner's motion to set aside judgment. Judgment was previously affirmed by Court of Appeal." "Court denies Petitioner's motion to

vacate examination. Judgment orders money payment and is reduced to abstract of judgment."

Robert filed a timely notice of appeal.

## **DISCUSSION**

### **I.**

Robert challenges the trial court's denial of his motion to vacate the examination and his fourth motion to vacate the 2004 divorce judgment. On appeal, we review the trial court's order for an abuse of discretion. (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682 (*Rosevear*); *In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138.)

The facts on which the court exercised its discretion are reviewed under the substantial evidence standard. (*In re Marriage of Carlsen* (1996) 50 Cal.App.4th 212, 215.) When two or more inferences can be reasonably deduced from the facts, we lack any authority to substitute our decision for that of the trial court. (*Rosevear, supra*, 65 Cal.App.4th at p. 682.)

### **II.**

Robert contends the trial court erred in denying him a hearing on Carolyn's alleged perjury. Robert renews his claims that Carolyn misled him as to her income from Williams and argues our prior opinion never addressed his perjury allegations because he had not previously raised them.

Under Robert's analysis, the trial court was mistaken in denying his motion to set aside the judgment, finding the "[j]udgment was previously affirmed by Court of Appeal." Robert argues: "That is an impossibility since perjury was not alleged

in the prior action and the word does not even appear in the November 1, 2007 opinion. Neither a judgment, nor an opinion, nor even a commentary on perjury exists. The fact the trial court relied on simply does not exist."

Our opinion dealt extensively with the trial court's refusal to vacate the judgment because Carolyn failed to fully disclose her "community interest" in Williams. Robert had alleged that Carolyn received benefits from Williams worth over \$110,000. In deposition, Carolyn testified her parents set up Williams as an estate planning device to avoid probate. Income to Williams was completely under the control of Carolyn's father and was reinvested, not distributed to Carolyn or her sisters.

As a partnership, Williams's income was attributed to its members, including Carolyn. However, she did not receive an actual payment; instead, Carolyn received payments from her father, who sent her the money necessary to pay the taxes on the Williams income.

Robert argued Carolyn possessed a community interest in Williams, an interest she failed to fully disclose on her disclosure declaration. We found substantial evidence supported the trial court's denial of Robert's motion to vacate based on Carolyn's alleged misconduct.

Carolyn's deposition testimony established that Williams existed solely as an estate planning device. Robert failed to rebut this testimony. Instead, we noted: Robert "baldly asserts Carolyn did some work for Williams and received income and benefits from Williams totaling, in Robert's estimation,

more than \$100,000. . . . [¶] In considering Robert's claim that Carolyn failed to accurately describe her interest in Williams in her disclosure declaration, the trial court could choose to find Carolyn's version of events more reliable than Robert's unsupported accusations." (*Mead I, supra*, C052999.)

In this appeal, Robert again sets forth unsubstantiated claims against his former spouse: "In the intervening period prior to the June 1, 2010 Motion to Set Aside Judgment, Robert received reports of Carolyn buying a 65-foot motorhome, traveling extensively and purchasing several houses." Robert also alleges Carolyn's income and expense declaration states she was receiving income from Williams. According to Robert, this "phantom income" allowed Carolyn to enjoy a lifestyle that cost \$8,204 per month.<sup>5</sup>

Based on this evidence, Robert argues that Carolyn committed perjury in her predivorce deposition in 2004 regarding her income from Williams. He contends the trial court denied him due process by failing to hear his perjury claim. Since, according to Robert, no substantial evidence supports the trial

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<sup>5</sup> Robert contends Carolyn "admitted unconditionally" to receiving income from Williams in her income and expense declaration, since the declaration "unequivocally states" that she was receiving income of \$3,400 monthly, additional income of \$10,000, and "confessed" the additional income resulted from distributions from Williams. However, a review of the declaration reveals \$3,400 average monthly rental income and a one-time payment from Williams of \$10,000. Carolyn's income taxes were \$12,000, more than the payment from Williams.

court's decision, the court abused its discretion, requiring reversal.

Although Robert labels his new claim a claim of "perjury," he refuses to acknowledge that, in his previous motion to vacate, he accused Carolyn of lying under oath regarding income from Williams. In our previous opinion, we found the trial court acted well within its discretion in finding Carolyn's version of events more reliable than Robert's unsupported accusations. In this appeal, whether Robert terms Carolyn's alleged representations regarding Williams "lying under oath" or "perjury," the trial court found the allegations concerning Williams without merit, based in part on our prior opinion.<sup>6</sup>

### **III.**

Robert mounts yet another attack on paragraph 8 of the marriage settlement agreement, which awarded Robert the family home and obligated him to pay Carolyn an equalizing payment of \$50,000 for the release of her interest in the property. We confess to having difficulty following Robert's arguments, but he appears to be claiming the trial court failed to follow our previous opinion regarding the note and the deed of trust.

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<sup>6</sup> Robert argues Family Code section 2107, subdivision (d) permits the trial court to make a finding of perjury up to three years after discovery of the perjury. However, section 2107, subdivision (d) only adds an additional avenue for relief, allowing a complaining party to file a motion showing good cause to grant a voluntary waiver of receipt of the noncompliant party's declaration of disclosure. Robert did not seek a grant of waiver of receipt of a declaration of disclosure.

Not so. On January 10, 2006, the trial court stated that Robert failed to comply with the court's earlier order by failing to provide a note and deed of trust acceptable to the court. The court, citing Robert's 13 months of noncompliance, accelerated the obligation to pay the full \$50,000 plus interest. The court's action was secured by an abstract of judgment. Robert never appealed this order, and our opinion does not supersede or abrogate this order. Our discussion was limited to Robert's myriad challenges to paragraph 8 and did not mention the trial court's order.

**DISPOSITION**

The judgment is affirmed. Carolyn shall recover costs on appeal.

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RAYE, P. J.

We concur:

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ROBIE, J.

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HOCH, J.